

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

NOVEMBER 20, 2001

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, November 20, 2001 at 9:00 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 9:00 a.m. by Chairman ARTHUR SLATTERY.

Present: Commissioners ARTHUR SLATTERY, PAULINE IKAWA, BARBARA HEATH, NANCY LeRoy, Executive Director BETH EMMONS, Investigator ANN FLANAGAN, and Executive Secretary CINDY PATTEN.

- I. Motion by Commissioner HEATH, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on October 23, 2001.

II. APPOINTMENTS

9:00 a.m. - Equivalency Interviews

<u>CANDIDATE</u>	<u>COMMISSIONER</u>	<u>DETERMINATION</u>
MADELINE TERRANOVA	SLATTERY	DENIED

9:20 a.m. - SHERYL MCCUE appeared before the Commission to request accreditation as an instructor to teach continuing education core and elective courses. After discussion and review, the Commission unanimously denied Ms. McCue's request because she did not have the required 72 hours of teaching experience.

9:30 a.m. - BRENDA LYNCH appeared before the Commission to explain a "yes" answer to question #7 on her salesperson's application. After explanation, discussion and review, the Commission unanimously decided to approve Ms. Lynch's application contingent on her principal broker sending a letter to the Commission acknowledging his or her knowledge of Ms. Lynch's previous legal incident.

9:35 a.m. - ROSE MARIE PHILLIPS of Carlson GMAC appeared before the Commission to review the procedures and forms for Agency Disclosure recently revised by Carlson GMAC Real Estate. After discussion and review, the Commission unanimously decided to have Ms. Phillips arrange a meeting to further discuss the forms and procedures with Commissioner LeRoy and Investigator Ann Flanagan.

III. DISCUSSION

CLEMENT A. ST. HILAIRE requested the Commission to consider a Stay of Action of the Order issued on FILE NO. 2000-09-02 JEFFREY BRYAN VS CLEMENT ST. HILAIRE due to his civil

claim brought against Jeffrey Bryan in the Exeter District Court. After discussion and review, the Commission unanimously decided to deny the request based on the lack of statutory authority to grant a Stay of Action on pending civil litigation in a district court. Mr. Hilaire to be so notified.

The Executive Director presented a list of Instructors who did not attend the Annual Instructor's Workshop held on October 19, 2001. After review and discussion, the Commission unanimously decided to have the Executive Director determine which Instructors' explanations for non-attendance will be accepted or denied. Instructors to be notified.

DAVE ELIASON, an out of state instructor, requested accreditation as a New Hampshire instructor. After discussion and review, the Commission unanimously denied Mr. Eliason's request because he did not have the required 72 hours teaching experience in New Hampshire. The Commission decided to review this requirement as possibly being too restrictive. Mr. Eliason to be so notified.

V. **OTHER BUSINESS**

1. Tuesday, December 18, 2001 was unanimously approved as the date for the next regular meeting.

2. **CASE EVALUATIONS**

(a) **FILE NO. 2001-05-03**

Evaluator: Commissioner HEATH

Determination: The complaint file was re-assigned to Commissioner IKAWA for evaluation.

(b) **FILE NO. 2001-05-04**

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

(c) **FILE NO. 2001-06-01**

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

(d) **FILE NO. 2001-06-05**

Evaluator: Commissioner HEATH

Determination: No violation, should not be heard.

The above determinations were unanimously approved.

3. ORDERS

The following Orders were issued by the New Hampshire Real Estate Commission. Copies of the Orders are attached and become part of the official minutes of this meeting.

FILE NO. 3-8-00 REBECCA BRYAN & RYAN FRANKENBERG VS GERALD WINN
(CENTURY 21 WINN ASSOCIATES)

FILE NO. 2001-07-01 NHREC VS LEIGH BOSSE (DBA: CENTURY 21 RED COAT
REALTY)

FILE NO. 3-7-00 LINDA O'KEEFE VS CAROL ANDERSON & ALLAN COLE (AC REAL
ESTATE ASSOCIATES)

NHREC VS CYNTHIA GUNN

HEARING 10:05 AM

FILE NO. 2001-02-04 MARY GROUT AND GLADYS GARNEAU VS PAUL LEPERE AND
STEPHEN PARE (THE HAMPTONS REAL ESTATE)

Evaluator: Commissioner HEATH

The following persons were present at the hearing:

Commission: Commissioners ARTHUR SLATTERY, PAULINE IKAWA, NANCY LeRoy,
Executive Director BETH EMMONS, Investigator ANN FLANAGAN, and Executive Secretary
CINDY PATTEN.

Stenographer: BARRY G. NOLIN

Gerard J. Nolin & Associates, LLC
275 South St., P.O. Box 1088
Concord, NH 03302-1088

Evaluator: Commissioner HEATH evaluated the above matter and abstained from participation in the hearing and resulting decisions.

Complainants:

Mary Grout
&
Gladys Garneau

19 Nottingham Road
Tyngsboro, MA 01879

19 Nottingham Road
Tyngsboro, MA 01879

Attorney: Pro Se

Respondents:

Paul Lepere
&
Stephen Pare

The Hamptons Real Estate
25 Lafayette Road
Hampton Falls, NH 03844

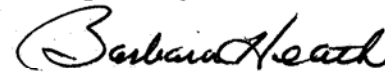
1 Wayside Drive
Exeter, NH 03833

Attorney: Pro Se

Decision: Pending - subject to review of transcripts and exhibits.

- III. Motion by Commissioner IKAWA, seconded by Commissioner LeRoy to adjourn the meeting. Chairman SLATTERY adjourned the meeting at 12:55 p.m.

Respectfully submitted,


BARBARA HEATH
Clerk

STATE OF NEW HAMPSHIRE

REAL ESTATE COMMISSION

FILE NO. 3-8-00

REBECCA BRYAN & RYAN FRANKENBERG

V

GERALD WINN

(CENTURY 21 WINN ASSOCIATES)

This matter comes before the Real Estate Commission on the complaint of Rebecca Bryan and Ryan Frankenberg, who allege violations of NH RSA 331-A:25-b II (a), 331-A:25-c I (c), (b-1), (b-4), 331-A:26, IV, V, XXVI, XXIX, XXXVI and New Hampshire Code of Administrative Rules Rea 404.05 (b) by Gerald Winn. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Gerald Winn (hereinafter referred to as respondent) was licensed as a real estate broker on 19 March 1969 and was so licensed and the broker of record for Century 21 Winn Associates at the time of the alleged violations.
2. Rebecca Bryan and Ryan Frankenberg (hereinafter referred to as complainants) claimed they responded to a blind advertisement for a property for rent located on Beaver Pond Road, Lyman, New Hampshire, through respondent's real estate agency.
3. Respondent furnished copies of the advertisements that ran at the time and they were both clearly marked advertisements indicating the broker's name and agency.
4. Complainants indicated that they knew the property was for sale, but were unhappy that the owner had not vacated the premises by the time complainants were ready to take occupancy and that the owner was planning to have some construction taking place on the premises while they would be living there.
5. Complainant Rebecca Bryan testified that she was upset that when they went to respondent's real estate office that respondent was in a meeting and they had to wait almost an hour to speak with him.
6. Respondent testified that complainants did not notify him that they would be coming to his office, and that he spoke to them as soon as he had opportunity.
7. Complainant Rebecca Bryan testified that at the meeting they told respondent they were not happy with the property, so respondent showed them other property listings, and that they were upset that respondent showed them properties that were furnished or otherwise unacceptable to them.

8. Respondent testified that when complainants indicated that they were not happy with the original property, he showed them some other rental properties he had listed hoping they might find something they liked.

9. Complainant Rebecca Bryan testified that since they were having no success locating another property they agreed to return to the first property with respondent to see if the owner would be more accommodating, but they were still not satisfied.

10. Respondent testified that the owner was upset that they were not going to rent his property because it put him in a difficult financial situation, but he agreed to return their deposit anyway.

11. After that complainants went to another property on respondent's inventory, but the tenant had not vacated the premises even though the availability date had past, and complainants felt that respondent was responsible for misrepresenting the property and wasting their time.

12. Respondent testified that the tenant was supposed to be out by the date represented on his inventory listing sheet, but that he had no control over the tenant's failure to vacate by the scheduled date.

13. Complainant Rebecca Bryan testified that respondent made changes to their signed lease without their knowledge or consent by inserting an asterisk for the rent to be paid on or before the tenancy date of 01 November 1999 (Plaintiff's Exhibit 1), and that this insertion caused complainants concern because they would not be arriving from out of state until a few days later.

14. Respondent testified that he denied the accusation and indicated that the asterisk insertion was made in complainants' presence after the photocopy was made, and that their arrival date was coordinated between complainants and their landlord.

15. Complainant Rebecca Bryan indicated that respondent should have disclosed to them that the property owner had a history of being difficult to deal with because of a previous situation with another rental agent.

16. Respondent indicated that he was not familiar with the details of past difficulties the owner had with a previous rental agent and tenant because he was not involved in it.

17. Complainant Rebecca Bryan indicated that they were upset that respondent did not apologize to them or offer to help them out with their expenses.

18. Respondent testified that he felt he did everything to help complainants find a property they would be happy with even though they were in effect breaking their rental agreement with his client, and that many of the things they were upset about were totally out of his control.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

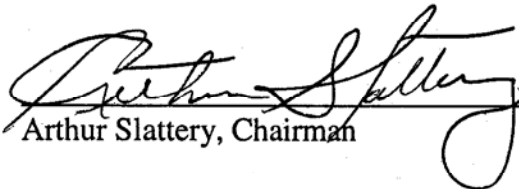
Due to a lack of evidence to the contrary, the Commission rules that respondent did not violate NH RSA 331-A:25-b II (a), 331-A:25-c I (c), (b-1), (b-4), 331-A:26, IV, V, XXVI, XXXVI or New Hampshire Code of Administrative Rules Rea 404.05 (b)

The Commission felt that it was unprofessional for respondent to insert a provision into the already signed contract after it had been photocopied rather than to insert it into the original document and have the parties to the contract initial the change. Therefore the Commission rules that respondent did violate NH RSA 331-A:26, XXIX.

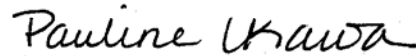
In view of the foregoing rulings of law, the Commission hereby Orders respondent to pay a disciplinary fine to the State of New Hampshire General Fund in the amount of \$150 within sixty (60) days of the date of this Order.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

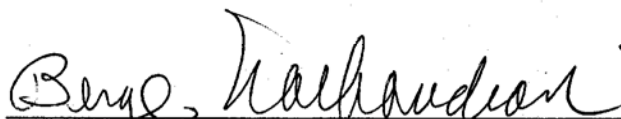
Former Commissioner DeLashmit evaluated this case and did not take part in the hearing or decision.


Arthur Slattery, Chairman

11-20-01
DATE


Pauline Ikawa, Commissioner

11-20-01
DATE


Berg Nalbandian, Alternate Commissioner

11-27-01
DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2001-07-01

NEW HAMPSHIRE REAL ESTATE COMMISSION

V

LEIGH BOSSE

(DBA CENTURY 21 RED COAT REALTY)

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violations of NH RSA 331-A:16, I; 331-A:26, II, XXVIII, XXIX, XXXVII, and New Hampshire Real Estate Commission Code of Administrative Rules Rea 305.02, and 404.02 by Leigh Bosse. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Leigh Bosse (hereinafter referred to as respondent) was licensed as a real estate broker on 25 September 1990 and was so licensed at the time of the alleged violations. Respondent was doing business as the owner of Century 21 Red Coat Realty.

2. On 18 April 2001, respondent was convicted by Hillsborough County Superior Court (No. 00-S-1673), of misdemeanor Sexual Assault RSA 632-A:4.

3. On 9 July 2001, the Real Estate Commission Investigator, Ann Flanagan initiated a complaint following investigation of information received from the victim on 21 May 2001.

4. Respondent was convicted of sexually assaulting his client at her residence which was listed with respondent after a showing which occurred on 27 June 2000.

5. Respondent testified that he was not disputing the facts that he was convicted of sexual assault and that he did not notify the Real Estate Commission of his conviction.

6. Respondent testified that besides being a real estate broker he is also an attorney, and that in the case of an attorney the court would notify the bar association of a criminal conviction. Respondent indicated that he did not think to notify the New Hampshire Real Estate Commission of his conviction assuming that the court would do so.

7. Respondent testified that even though his conviction was deemed sexual assault, that there was no violence or force involved. Respondent indicated that at the time he felt it was consensual, but the court determined that respondent's physical contact was unwanted by the victim.

8. Respondent testified that his actions were inappropriate because he is a married man.

9. Red Coat Realty lapsed with the New Hampshire Secretary of State on 24 January 2001. At the time of the alleged violations it was doing business as Century 21 Red Coat Realty, which was not registered with the New Hampshire Secretary of State or licensed with the New Hampshire Real Estate Commission. Century 21 Red Coat Realty had unregistered and unlicensed offices in Hillsborough, Henniker, Bennington, and Washington, New Hampshire. There is no record of Red Coat Realty ever being registered with the New Hampshire Secretary of State or licensed with the New Hampshire Real Estate Commission as a Century 21.

10. Respondent testified that he did not realize that Century 21 Red Coat Realty was unregistered and unlicensed, but when he received the complaint from the New Hampshire Real Estate Commission, he immediately took the steps necessary to comply.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

The New Hampshire Real Estate Commission cannot retry respondent's sexual assault conviction, and respondent does not dispute the fact that he failed to inform the Commission in writing within 30 days of being convicted of an offense involving a sexual crime. Respondent indicated that he thought the incident was consensual, but admits that regardless, it was inappropriate because he is a married man. The Real Estate Commission maintains that it is unprofessional conduct because respondent is a real estate professional. Any romantic contact initiated with clients or customers during real estate transactions is unacceptable because a customer or client's interests or the interests of the other parties in the transaction could be compromised as a result of such contact. Therefore the Commission rules that respondent did violate NH RSA 331-A:26, II, XXVIII, XXIX, and XXXVII.

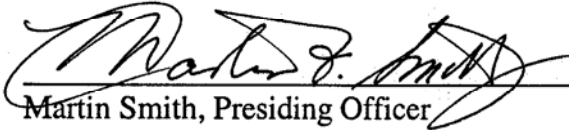
Respondent admitted that he owned and operated unregistered and unlicensed Century 21 Red Coat Realty offices, and that he immediately took the steps necessary to correct the problem once he was made aware of it. Therefore the Commission rules that respondent did violate NH RSA 331-A:16, I and New Hampshire Real Estate Commission Code of Administrative Rules Rea 305.02 and 404.02.

Because of the circumstances of the conviction and respondent's acknowledgement of his wrongdoing, the Commission feel confident that a similar incident would not happen again. The Real Estate Commission hereby Orders that respondent pay a disciplinary fine to the State of New Hampshire General Fund in the amount of \$1,000.00 within (ninety) 90 days of the date of this Order.

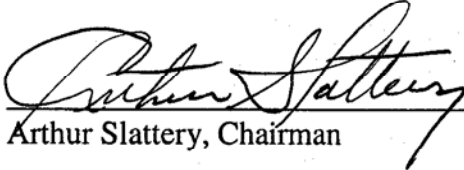
Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this

Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

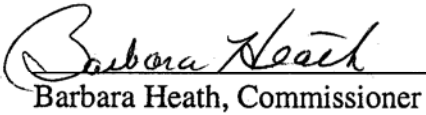
Commissioner LeRoy evaluated this case and did not take part in the hearing or decision.


Martin Smith, Presiding Officer

11/27/01
DATE


Arthur Slattery, Chairman

11-20-01
DATE


Barbara Heath, Commissioner

11-20-01
DATE

STATE OF NEW HAMPSHIRE

REAL ESTATE COMMISSION

FILE NO. 3-7-00

LINDA O'KEEFE

V

CAROL ANDERSON & ALLAN COLE
(AC REAL ESTATE ASSOCIATES)

This matter comes before the Real Estate Commission on the complaint of Linda O'Keefe, who alleges violations of NH RSA 331-A:26, V, XII, XXV, XXXIII, XXXVI and New Hampshire Code of Administrative Rules Rea 404.03, 701.01, 701.02, and 701.04 by Carol Anderson and Allan Cole. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Carol Anderson (hereinafter referred to as respondent) was licensed as a real estate salesperson on 07 June 1985 and was so licensed and associated with AC Real Estate Associates at the time of the alleged violations.
2. Allan Cole (hereinafter referred to as respondent) was licensed as a real estate salesperson on 20 May 1977 and as a real estate broker on 06 July 1978, and was so licensed and the broker of record for AC Real Estate Associates at the time of the alleged violations.
3. Linda O'Keefe (hereinafter referred to as complainant) put a \$500 deposit to purchase a mobile home for \$28,000 located at 20 Hazel Drive in a park in Concord, New Hampshire, which was listed by respondents.
4. Respondent Carol Anderson testified that complainant verbally agreed to seller's counteroffer of \$29,000, but the signatures were not procured on the Purchase & Sales Agreement. Respondent Carol Anderson indicated she felt that complainant's actions involved in providing the lender with required information showed that they were in agreement with the counteroffer terms.
5. Complainant testified that she was shocked that respondent Carol Anderson submitted their application for financing for \$29,000 when that price had never been agreed to in writing.
6. Complainant testified that she was unwilling to close on the property because of issues concerning the condition of the carpet, some missing faucets, and debris at the property.

7. Complainant further testified that she felt that seller was attempting to cover up some of the flaws of the carpet and a hole in the floor by the way the furniture was arranged.

8. Respondent Carol Anderson testified that nothing was being covered up by the seller, and the hole in the floor was from the television cable.

9. Respondent indicated that seller was unwilling to take less than \$29,000 for the property and was only willing to compensate complainant \$500 towards the carpet, the debris was to be removed as soon as the weather permitted, and they were willing to hold out \$200 in escrow as a show of good faith.

10. Complainant testified they never received a Sellers Property Disclosure regarding water, sewer or insulation.

11. Respondent Carol Anderson testified that the water and sewer were municipal, and the insulation type and factor were clearly posted on the frame of the unit.

12. Complainant testified that she relied on respondents because she thought they were representing her.

13. Respondent Allan Cole indicated that they normally have buyers sign a non-agency disclosure for their listings.

14. Respondent Carol Anderson indicated that she did not do an agency disclosure but felt that she represented both buyers and seller in a fair manner.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Due to a lack of evidence to the contrary, the Commission did not find that respondents were party to any fraud to conceal material defects, or failed to disclose conditions of the property. Therefore the Commission rules that respondents did not violate NH RSA 331-A:26, V, Rea 701.02, or 701.04.

Due to a lack of evidence to the contrary, the Commission rules that respondents did not violate NH RSA 331-A:26, XXV, XXXIII, XXXVI, or Rea 404.03.

Complainant testified that she relied on respondents because she thought they were representing her. Respondent Carol Anderson indicated that she did not do an agency disclosure but felt that she represented both buyers and seller in a fair manner. Therefore the Commission rules that respondents did violate NH RSA 331-A:26, XII and Rea 701.01.

Respondent Allan Cole indicated that they normally have buyers sign a non-agency disclosure for their listings. This did not occur in this transaction, but in the case

of their own listings, they should be disclosing seller agency rather than non-agency relationships to buyers.

In the absence of an executed purchase and sales contract, the \$500 deposit should not have been deposited in respondents' escrow account (pursuant to Rea 702.01, b).

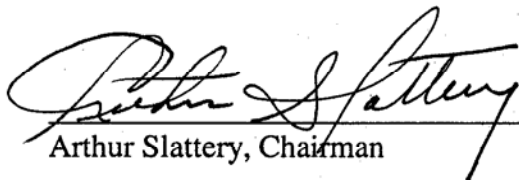
In view of the foregoing rulings of law, the Real Estate Commission hereby Orders that respondents return the \$500 deposit to complainant within thirty (30) days of the date of this Order, show proof of attendance at a New Hampshire Real Estate Commission accredited 40 hour pre-licensing course by the end of March 2002, and pay a disciplinary fine to the State of New Hampshire General Fund in the amount of \$500 each within sixty (60) days of the date of this Order.

Under the provisions of RSA 331-A28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

Commissioner Heath evaluated this case and did not take part in the hearing or decision.


Martin Smith, Presiding Officer

11/27/01
DATE


Arthur Slattery, Chairman

11-20-01
DATE


Nancy LeRoy, Commissioner

11-20-01
DATE

STATE OF NEW HAMPSHIRE

REAL ESTATE COMMISSION

ORDER

NEW HAMPSHIRE REAL ESTATE COMMISSION

V

CYNTHIA GUNN

This matter comes before the Real Estate Commission which alleges violations of NH RSA 331-A:17, II and Rea 305.02, 401.01, and 702.01 by Cynthia Gunn. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. As a result of an informal inquiry which in essence appeared to be a common deposit dispute, certain other facts surfaced.

2. Cynthia Gunn (hereinafter referred to as respondent) was licensed as a real estate broker on 05 May 1998 and was so licensed at the time of the alleged violations.

3. Respondent owns and operates Cynthia Gunn Realty, although this firm name was not registered with the Secretary of State or the New Hampshire Real Estate Commission at the time of the alleged violations. Respondent testified that she was told by the New Hampshire Secretary of State back when she inquired about registering the name that she did not have to register to use her own name, but that she was not aware that attaching the word "Realty" to her name made it a trade name requiring registration. Respondent has since then applied for registration of the trade name with the New Hampshire Secretary of State and the New Hampshire Real Estate Commission.

4. In May 2000, respondent came into the New Hampshire Real Estate Commission office to renew her broker's license. She paid \$75 to the State of New Hampshire, which was deposited by the State. However, her license application, continuing education affidavits, and bond were returned to her address regular mail with an explanation from the licensing coordinator that her signature needed to be notarized.

5. Respondent indicated that when she came into the Commission office in May 2000 to renew her broker's license, she asked the person at the front desk if she should go across the street to the bank to get her signature notarized, but was told that someone here would notarize it and she was all set.

6. Respondent testified that she had no idea that her license was not renewed by the Commission because the Commission had kept her money for a year and a half and she never received the regular mail return of her application.

7. Respondent testified that she did not look at her wall license or pocked ID card to check the expiration date, not even suspecting there was a problem.

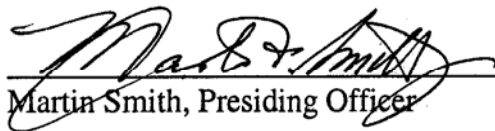
8. Responded indicated that at the time her wall license would have been in a box during a moving transition, and that her family was in the mist of serious health and personal situations, and that if the license application had been sent regular mail to the address from which she was moving that the person residing there would likely not have forwarded it to her.

9. Since there was an informal inquiry which in essence appeared to be a common deposit dispute, the Commission requested a copy of respondent's escrow accounting of the \$3,500 deposit for respondent's listing. This accounting indicated that the \$3,500 deposit was accounted for, but there were other funds and transactions occurring in the same account which were not escrow related.

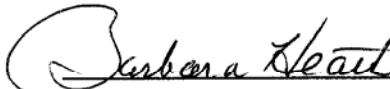
10. Respondent testified that she was not aware that the escrow account had to be separate and distinct, and admitted that there were funds and transactions in the account which were not escrow related. Respondent has since then opened up an appropriate escrow account.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondent has admitted to the alleged violations. However, because of the circumstances and since respondent has taken immediate steps to rectify each situation, the Commission rules that no further action is necessary to ensure respondent's future compliance with New Hampshire RSA 331-A and the New Hampshire Code of Administrative Rules.


Martin Smith, Presiding Officer

11/27/01
DATE


Barbara Heath, Commissioner

11-20-01
DATE


Nancy LeRoy, Commissioner

11-20-01
DATE